Supreme Court of the United States.

October Term, 1922

No. 232

THE UNITED STATES, *Appellant*,
v.
WILL J. ALLEN

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEE.

GEORGE A. KING,
WILLIAM B. KING,
GEORGE R. SHIELDS,
Attorneys for Appellee.

TABLE OF CONTENTS.

LIST OF CASES.

Supreme Court of the United States.

October Term, 1922.

THE UNITED STATES,
Appellant,
v.
WILL J. ALLEN.
No. 232.

Appeal from the Court of Claims.

I. STATEMENT OF THE CASE.

CLAIM AND DECISION THEREON.

This is a claim made by the appellee, Will J. Allen, a Yeoman in the Coast Guard, for pay at the rate fixed by law for a Chief Yeoman in the Navy from April 6, 1917, to May 28, 1919, less pay already received by him at a lower rate. The claim is based upon the following provision of the act of May 22, 1917 (Chap. 20, 40 Stat. 84, 87): "An Act To temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes." Section 15." * * * That during the continuance of the present war, warrant officers, petty officers and enlisted men of the United States Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy."

Also Section 13: "Nothing contained in this Act shall operate to reduce the rank, pay, or allowances that

would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act."

The Court of Claims found as a fact (Finding III, record, p. 4):

"The duties of yeomen in the Coast Guard corresponded in all respects to those of chief yeoman in the Navy."

The Court of Claims decided that as the law intended to give corresponding pay for corresponding duties the claimant was entitled to the same rate of pay as a chief yeoman in the Navy.

Judgment was entered for the amount of difference of pay due on this basis in the sum of $486.32 (Finding VI, record, p. 6; opinion of the court, record, pp. 6, 9). The case is reported 56 C. Cls. 265. The United States appealed to this court (record, p. 12).

By the act of January 28, 1915 (Chap. 20, 38 Stat. 800, 801) it is provided that the Coast Guard "shall constitute a part of the military forces of the United States and which shall operate under the Treasury Department in time of peace and operate as a part of the Navy, subject to the orders of the Secretary of the Navy, in time of war or when the President shall so direct."

In accordance with the provisions of this act the Coast Guard by the declaration of war, April 6, 1917 (Joint Resolution, Chap. 1, 40 Stat. 1) came under the jurisdiction of the Secretary of the Navy and so remained until by Presidential order issued under authority of the Overman act, "An Act Authorizing the President to coordinate or consolidate executive bureaus, agencies, and offices, and for other purposes, in the interest of economy and the more efficient concentration of the

Government" (Chap. 78, 40 Stat. 556), it was retransferred to the Treasury Department, August 28, 1919 (32 Opinions, 185, paragraph 1).

The Facts Found.

The service of the claimant in the Coast Guard is stated in Finding I (record, pp. 3, 4). He enlisted as a ship's writer in 1913, but reached the higher grade of yeoman before the declaration of war and held that grade during the entire period covered by the claim. Ship's writer and yeoman constitute the clerical force of the Coast Guard, yeoman being the higher. Ships' writers were generally promoted to the grade of yeoman after showing proper qualifications after a service of three years. The claimant in this case was a skilled stenographer and typist when he enlisted and possessed all the qualifications of the rating of yeoman during his entire term. (Finding II, record, p. 4). In the Navy there are yeoman, third, second and first class, and above them a grade known as chief yeoman. Yeomen in the Coast Guard were required to be stenographers in addition to having all the other qualifications required for chief yeomen in the Navy. Their duties in all respects corresponded to those of chief yeoman in the Navy.

Shortly after the passage of the act of May 22, 1917, Sec. 15 of which provides that petty officers, etc., of the Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy, the Commandant of the Coast Guard submitted June 5, 1917, to the Chief of the Bureau of Navigation of the Navy Department a tabular statement showing the several grades and ratings of warrant officers, petty officers and enlisted men of the Coast Guard, and stated opposite

thereto the grades or ratings in the Navy to which the Coast Guard grades or ratings correspond. These tabular statements were arranged on the basis of the duties and responsibilities of the several ratings.

In this table a ship's writer was put down as corresponding to a yeoman, first class, in the Navy, and a yeoman in the Coast Guard to a chief yeoman in the Navy.

Thereafter the Secretary of the Navy, October 10, 1917, issued a general order giving the corresponding grades. Both ship's writers and yeomen in the Coast Guard are there tabulated as corresponding to yeoman, first class in the Navy. The tabular statement of corresponding ratings as submitted by the commandant of the Coast Guard was in many other respects changed by the Navy Department.

This action was followed by a circular letter from Coast Guard headquarters, dated January 3, 1918, carrying out the order of the Secretary of the Navy, and showing among other things, the comparative rates of pay for petty officers of the Coast Guard and for those of the Navy to whom the Navy Department general order of October 10, 1917, aforesaid, had declared such petty officers to correspond.

According to this statement the pay of all petty officers and nearly all enlisted men in the Coast Guard was already higher than the pay in the Navy, thus giving to the petty officers of the Coast Guard no benefit of section 15 of the act of May 22, 1917 (Finding IV, record, p. 5).

Reference is made in Finding V (record, p. 5) to the action taken under the act of May 18, 1920 (Chap. 190, 41 Stat. 601), "An Act To increase the efficiency of the commissioned and enlisted personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic

Survey, and Public Health Service." By Section 8 of that act (41 Stat. 603) not only was the provision of the act of 1917 repeated and extended to the entire personnel of the Coast Guard, both commissioned and enlisted, but it was also provided:

"and the grades and ratings of warrant officers, chief petty officers, petty officers, and other enlisted persons in the Coast Guard shall be the same as in the Navy, in so far as the duties of the Coast Guard may require," etc.

Thus by that act not only was the pay assimilated but the duties of the officers were also made to correspond to those of the Navy. Under this statute both a ship's writer and yeoman in the Coast Guard with three years' total service as ship's writer and yeoman were to have the title and rating of chief yeoman (Finding V, record, p. 5).

The action taken under this act although subsequent to the period covered by this claim is found and referred to by the Court of Claims as showing that the Treasury Department under which the Coast Guard normally served and to which it had in 1919 been returned decided that the duties of a yeoman of more than three years' service in the Coast Guard were equivalent to those of a chief yeoman in the Navy.

In accordance with the general statement toward the end of Finding IV (record, middle p. 5) the claimant got no benefit of the act of May 22, 1917 (*ante*, p. 1) and received simply the rate of pay due at the lower Coast Guard rate to a yeoman in the Coast Guard, that pay being higher than that of a yeoman, first class in the Navy, which rating was held by the Navy Department to be the equivalent of a yeoman of the Coast Guard.

To avoid any possible reduction in pay it was provided by the act of May 22, 1917 (40 Stat. 87):

"Sec. 13. Nothing contained in this Act shall operate to reduce the rank, pay, or allowances that would have been received by any person in the Navy, Marine Corps, or Coast Guard except for the passage of this Act."

II. BRIEF OF ARGUMENT.

Pay of Corresponding Navy Grade.

The opinion of the Court of Claims by Judge Hay (record, pp. 6–9) states the grounds of decision very fully and refers to many authorities in this court (record, pp. 8, 9).

The law provides that petty officers, etc., of the Coast Guard shall receive the same rates of pay as are or may hereafter be prescribed for corresponding grades or ratings and length of service in the Navy. The Court of Claims found as a fact: "The duties of yeomen in the Coast Guard corresponded in all respects to those of chief yeoman in the Navy" (Finding III, record, p. 4; *ante*, p. 3). It hence follows that a yeoman in the Coast Guard was entitled to the pay of a chief yeoman in the Navy.

This construction is greatly fortified by its subsequent adoption by the Treasury Department in carrying out the act of May 18, 1920 (Chap. 190, 41 Stat. 601). By Section 8 of that act (p. 603, *ante*, p. 5) not only pay, allowances and increases are to be the same for a petty officer, etc., of the Coast Guard, as those of corresponding grades or ratings and length of service in the Navy, but the grades and ratings themselves are to be the same as in the Navy.

The Secretary of the Treasury classified yeomen in the Coast Guard of more than three years' service as chief yeomen in the Coast Guard.

AUTHORITIES IN THIS COURT.

The case in this court most nearly approaching the present one in principle is *United States* v. *Crosley*, 196 U. S. 327. That case arose under the Navy Personnel act of March 3, 1899 (Chap. 413, 30 Stat. 1004), by Section 13 of which (p. 1007) it was provided:

"That after June 30, 1899, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army."

The opinion of the court by Mr. Justice Day thus treated a similar contention as is made on behalf of the government in this case (pp. 333, 334):

"The contention of the Government is that, while the pay of naval officers is made to correspond with that of army officers of like rank, the naval officer assigned to duty as aid may not receive the $200 additional pay, as it is not pay on account of rank, but on account of service. But we think this is too narrow a construction of the terms of the act, in view of its intent and purpose. For while we may not add to or take from the terms of a statute, the main purpose of construction is to give effect to the legislative intent as expressed in the act under consideration. An aid to a rear admiral renders services similar to those rendered by an aid to a major general in the Army. The naval aids are appointed under paragraphs 343 and 345 of the Naval Regulations of 1895, which are:

"'Sec. 343. The chief of staff, flag lieutenant, clerk and aids shall constitute the personal staff of a flag officer.

"'Sec. 345. (1) A flag officer may select any officer of his command to serve as flag lieutenant or clerk, provided his grade accords with the rules laid down in Article 344. (2) He may also, when necessary, select other line officers junior to the flag lieutenant to serve

on his personal staff as aids, but shall not assign naval cadets to such duty.'

"They are selected for like service, and it is admitted that there would have been reason for a like express statutory provision in their favor as to compensation. The sum of $200 is allowed to an aid to a major general in addition to the regular pay of his rank. It is allowed as payment for the additional service imposed. Bearing in mind the purpose of the act to give the same compensation to corresponding officers of the Army and Navy, and that it is expressly provided that officers of the Navy shall receive the same pay and allowances, except for forage, as are or may be provided by law for officers of the Army of corresponding rank, we think it does no violence to, but rather carries out, the purpose of Congress to construe this section so as to give to an aid of a rear admiral, in addition to the regular pay of his rank, pay similar to that allowed an aid to a major general. We reach the conclusion that the Court of Claims was right in its allowance of this item."

This decision was extended in *United States* v. *Miller*, 208 U. S. 32, to a case in which the officer was not even called an aid to the rear admiral, but it was said that if he performed similar duties he was entitled under the assimilating provision of the act of 1899 to the same pay as the officer to whose compensation his own was assimilated. The court said in the opinion, also by Mr. Justice Day (pp. 35, 36):

"It is the contention of the counsel for the Government that this language clearly indicates that a flag lieutenant on the staff of a rear admiral, designated in paragraph 1, Sec. 345, is to be distinguished from aids junior to the flag lieutenant designated in paragraph 2 of the section. But we think it would be giving a too narrow interpretation of the purpose of Congress to give naval officers the same pay as officers of corresponding rank in the Army to construe this regulation to deny such pay to a flag lieutenant because he may not have been

technically designated as an aid. And taking the regulation literally, it does not necessarily follow that because the rear admiral may select a junior to the flag lieutenant to serve on his personal staff as aid, that the one designated as flag lieutenant or clerk might not also be regarded as an aid. Be this as it may, we think the statute should be construed so as to effect the purpose of Congress, and that a determination of who are aids should be arrived at by a consideration of the nature and character of the duties of the officers constituting the personal staff of a flag officer. Referring to the letter of the Secretary of the Navy embodied in the finding of facts we find:

"'As in the case of a general officer of the Army, these officers, including the flag lieutenant, are, in every acceptation of the word, aids for assisting the commander-in-chief in the performance of his duties. The number of officers thus assigned is limited only by the actual necessities of the case. In very large fleets, where the staff work is especially heavy, two or three so-called aids may be necessary in addition to the flag lieutenant and the secretary. They are all, from flag lieutenant to the lowest aid in point of rank, aids in every sense of the term to the flag officer. The senior aid of the flag officer is, in ninety-nine cases out of a hundred, chosen by the flag officer personally as a flag lieutenant. The term 'flag lieutenant' in itself by no means indicates all the duties which the officer so appointed performs. Different flag officers distribute their duties among the members of the personal staff in different ways. Some have charge of one thing, or set of things, another has charge of other things; but from time immemorial, in other naval services as well as our own, it has been customary to term the senior aid of the flag officer the 'flag lieutenant,' because from time immemorial also, that aid has been placed in charge, as one of his duties only, of the signal work of the fleet or squadron in which he may happen to be serving.

* * * * * * *

It will be seen from this that the flag lieutenant is in every respect the aid, peculiarly, of the flag officer, and

his duties, in comparison with those of an aid to a general officer, more nearly conform to those performed by a military aid than do those of any other officer on the personal staff of a flag officer.'

"In view of the character of the duties thus required of a flag lieutenant, who is to all intents an aid to the rear admiral, we are of opinion that the Court of Claims did not err in its decision on this branch of the case, that the claimant was entitled to the increased pay awarded to the aid of a major general, at the rate of $200 a year."

ADMINISTRATIVE CONSTRUCTION.

In the dissenting opinion of the Court of Claims by Judge Graham (Record, p. 9) the view is taken that the question involved was one of administration arising in the course of the business of the Navy Department and was therefore committed to the exclusive discretion of the Secretary of the Navy; and that he having decided that a yeoman in the Coast Guard corresponded only to a yeoman first class, in the Navy, that construction is decisive and precludes all independent inquiry.

The act of 1917 makes no change in either the titles or duties of these petty officers of the Coast Guard. They continued from and after the passage of that act to be called by the same names and to perform the same duties as they had performed previously to the passage of that act.

The question concerns pay and pay alone. There might be some reason for a ruling of this character if there had been a change in the official designation and ratings of these men as was done by the subsequent act of May 18, 1920 (Chap. 190, 41 Stat. 601, sec. 8, p. 603, *ante*, p. 5).

There is no ground for the application of the doctrine of the finality of administrative decision to the action

of the Secretary of the Navy on the question of pay of a yeoman of the Coast Guard. A decision of administrative authority is final only when it is made so, either by express statutory authority or by necessary deduction therefrom.

In *United States* v. *Standard Brewery*, 251 U. S. 210, this court said with reference to a contention as to the conclusiveness of an administrative determination (pp. 219, 220):

"Nothing in the act remits the determination of that question to the decision of the revenue officers of the Government. While entitled to respect, as such decisions are, they can not enlarge the meaning of a statute enacted by Congress. Administrative rulings can not add to the terms of an act of Congress and make conduct criminal which such laws leave untouched."

Moreover, the administrative decisions are conflicting. The Commandant of the Coast Guard ruled as is here contended and as found by the Court of Claims that yeomen of the Coast Guard correspond to chief yeomen in the Navy. That decision, it is true, was set aside by the Secretary of the Navy. Later in 1920, the Secretary of the Treasury decided that a yeoman of three years' standing in the Coast Guard corresponded to a chief yeoman in the Navy and gave that rank and designation to all the former yeomen in the Coast Guard of requisite length of service. The Court of Claims supports this conclusion by finding that the duties of yeomen in the Coast Guard in all respects correspond to those of chief yeomen in the Navy.

Waite v. *Macy*, 246 U. S. 606, and *International Railway Company* v. *Davidson*, 257 U. S. 506, hold that a regulation or order of an executive department must be consistent with the law.

In *United States* v. *Symonds*, 120 U. S. 46, a naval regulation was held void as conflicting with a statutory provision defining what should constitute shore duty as distinguished from sea duty.

The decision in the present case leaves unimpaired the power of the Secretary of the Navy or of the Secretary of the Treasury, under whose jurisdiction the Coast Guard now is, to appoint or remove within the limits of the law any officer or enlisted man in the Coast Guard or to direct his conduct in the service. It simply awards to the claimant that pay which under a true construction of the law is his due.

One finding of the Court of Claims can not be ignored in this direction (Finding IV, record, *ante*, p. 5):

"According to this statement the pay of all petty officers and nearly all enlisted men in the Coast Guard was already higher than the pay in the Navy, thus giving to the petty officers of the Coast Guard no benefit of section 15 of the act of May 22, 1917."

It is to be presumed that the intention of Congress in enacting Section 15 of the act of May 22, 1917 (Chap. 20, 40 Stat. 84, 87, *ante*, p. 1) was to give some benefit to these petty officers. The presumptions are therefore against a construction which resulted in giving them no benefit whatever.

In *Converse* v. *United States*, 26 C. Cls. 6, 10, this principle of statutory construction was stated:

"There are a number of rules for the interpretation of statutes, such as 'the will of the legislature must be gathered from the language of the act,' 'words must be taken in their ordinary signification,' and the like; but a fundamental principle underlying these rules is that an intelligent purpose shall be ascribed to the law-making

power, an intention to accomplish something by the enactment. Before the judiciary undertakes to discover what the legislature intended to do, it must concede that the legislative will intended to do something."

The judgment of the Court of Claims should be affirmed.

GEORGE A. KING,
WILLIAM B. KING,
GEORGE R. SHIELDS,
Attorneys for Appellee.